

A N A L Y S I S

OF

Pending Proposals Dealing With

THE RIGHT TO TRAVEL ABROAD

Prepared by

COMMISSION ON LAW AND SOCIAL ACTION

OF THE AMERICAN JEWISH CONGRESS

15 East 84th Street

New York 28, N.Y.



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Prepared by

Commission on Law and Social Action

Shad Polier, Chairman

Leo Pfeffer, Director

Will Maslow, General Counsel

---

American Jewish Congress

15 East 84 Street, New York 28, N. Y.

Israel Goldstein, President

Justine Wise Polier, Chairman  
Executive Committee

Max A. Kopstein, Chairman  
Administrative Committee

Isaac Toubin, Executive Director

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ANALYSIS OF PENDING PROPOSALS DEALING  
WITH THE RIGHT TO TRAVEL ABROAD

INTRODUCTION

In 1955, Congress established the Commission on Government Security, headed by Loyd Wright, to study the various programs for protecting the security of the Federal government. The Wright Commission published its Report on June 6, 1957, which contained detailed summaries of the existing programs and their operation and outlined a number of recommended changes. Most of its proposals were embodied in a number of draft bills and executive orders included in the Report.

The Report deals with a number of specific topics,<sup>1/</sup> only one of which is considered here, the Passport Security Program. We discuss not only the Wright Commission Report but also the bills on the subject that have been introduced in Congress.

The draft bill incorporated in the Wright Commission Report has been introduced in the Senate (S. 2416) by Senators Stennis (D., Miss.) and Cotton (R., N.H.) and in the House (H.R. 8339) by Representative Hiestand (R., Cal.). (Senator Stennis was Vice Chairman and Senator Cotton was a member of the Wright Commission.) This bill, which is referred to here as

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<sup>1/</sup> These topics are: Federal Civilian Loyalty Program; Military Personnel Program; Document Classification Program; Atomic Energy Program; Industrial Security Program; Port Security Program; International Organizations Program; Passport Security Program; Civil Air Transport Security Program; Immigration and Nationality Program; Criminal Statutes.

the Wright Commission bill, deals not only with passports but also with ~~immigration, deportation~~ and naturalization.

Representative Walter (D., Pa.) has introduced three bills (H.R. 8655, H.R. 9352 and H.R. 9937) which differ in a number of respects from the Commission bills. H.R. 9352 and H.R. 9937 are omnibus bills dealing with all aspects of the Federal Security Program and, with respect to passports, are virtually identical. Since Representative Walter presumably intended H.R. 9937 to supersede the previous bills, we discuss only that bill here.

Senator Fulbright (D., Ark.) has introduced a bill (S.2770), dealing only with passport regulation, that is substantially more liberal than the Wright Commission proposals.

In this Analysis, the provisions of these bills are described and they are compared with the present law governing passports. For convenience, the Wright Commission and latest Walter bill are summarized in a single section under each subject heading.

## I. GENERAL SUMMARY

### 1. Present Law

At the present time, the Secretary of State has, in effect, complete discretion to decide who may travel abroad and where they may travel. This absolute power is not explicitly given to him by any statute but rather results from the indirect operation of two separate laws.

First, the McCarran-Walter Act (8 U.S.C. Sec. 1185) provides that, if the President, in time of war or national emergency, issues a proclamation imposing travel restrictions, it is unlawful for a citizen to leave or enter

the United States without a passport. (As noted below, such a proclamation is now in effect.) Second, the authority to issue passports is given to the Secretary of State by a statute (22 U.S.C. Sec. 211a) first enacted in 1856. The President has empowered the Secretary, under this law, to refuse passports and to restrict them against use in certain countries. Thus, the Secretary determines the extent to which American citizens may travel abroad.

The Secretary of State has issued regulations which describe more particularly those individuals who may not receive passports (22 C.F.R. Secs. 51.135 and 51.136). These regulations prohibit the issuance of passports to certain classes of subversives and to others whose travel abroad the Secretary of State considers not to be in the public interest. The regulations specifically state, however, that they are not intended to limit the Secretary's discretion over the issuance of passports.

Regulations have also been promulgated by the Secretary of State governing the procedure for appeal from decisions denying passports. There is no provision for appeal from geographical restrictions which apply alike to all persons.

## 2. Wright Commission and Walter Bills

The Wright Commission and Walter bills would amend present statutes in order to provide for stricter government control over the foreign travel of American citizens. The President's power to make it a crime to enter into or depart from the United States without a passport would be extended to times of peace. Penalties would be imposed for a refusal to surrender an invalid passport and for travel in countries where travel has been prohibited. The prohibition of the issuance of passports to certain classes

of individuals, now contained in the regulations, would be made statutory.

The Wright Commission proposed a number of changes in the procedure for review of passport refusals. The Walter bill proposes a statutory review procedure that differs substantially from the one presently in effect.

### 3. Fulbright Bill

Under the Fulbright bill, the power of the Secretary of State to curb the foreign travel of American citizens would be considerably reduced. Instead of possessing a general power to place restraints on travel, the Secretary could refuse passports only to specified classes of individuals. These restraints could be imposed only in time of war or national emergency and an emergency could be extended for a period of more than one year only by act of Congress. In addition, the authority of the Secretary to impose restrictions on travel to particular countries would be curtailed. Without specifying details, the bill would give any individual to whom a passport is denied a hearing before a board of passport appeals under regulations to be issued by the Secretary of State.

## II. SPECIFIC PROVISIONS

### A. RESTRICTIONS ON ENTRY AND EXIT

#### 1. Present Law

Section 215 (a) of the McCarran-Walter Act empowers the President, in time of war or during a national emergency proclaimed by the President, to issue a proclamation imposing restrictions on the foreign travel of American citizens. The statute provides that after the President has issued such a proclamation it shall be unlawful for a citizen to leave or enter the United States without a passport. A fine of no more than \$5,000 and a prison



term of up to five years may be imposed for violation of the section.

In January 1953, President Harry S. Truman issued a proclamation (No. 3004, Jan. 17, 1953) making the restrictions of Section 215(a) effective. The authority to impose these restrictions on foreign travel was based on the existence of the national emergency proclaimed at the beginning of the Korean War in 1950 (Proc. 2914, 15 Fed. Reg. 9029). Both the proclamation declaring a national emergency and the proclamation requiring passports for foreign travel have continued in effect to the present time. Consequently it is now a crime to leave or enter the country without a passport.

A passport is ordinarily not required for travel in the Western Hemisphere (22 C.F.R. Sec. 53.2). Yet, the regulations explicitly give the Secretary of State the power to restrain persons from traveling to countries in this hemisphere unless they have passports (22 C.F.R. Sec. 53.5). Thus, in effect, the Secretary's control over foreign travel is complete.

It should also be noted that most foreign countries require entering aliens to have passports. In response to a 1952 questionnaire circulated by the Yale Law Journal to 37 foreign countries, only five indicated that they would admit persons without passports (61 Yale Law Journal 171, N.3 (1952)).

## 2. Wright Commission and Walter Bills

The Wright Commission and Walter bills would amend the McCarran-Walter Act to authorize the President to require a passport for foreign travel even in times of peace. Although these bills do not mention the subject of travel in the Western Hemisphere, the Secretary's unlimited power

over foreign travel, which would remain unchanged under the bills, undoubtedly would allow him to regulate travel in this hemisphere.

### 3. Fulbright Bill

Under the Fulbright bill, in time of war or in the event of a national emergency declared by the President to require measures under the passport act, the State Department could act administratively to withhold passports and to restrain foreign travel.<sup>2/</sup> Otherwise, the State Department could refuse a passport only by bringing a proceeding in the United States District Court. In any event, the travel of only a limited number of persons could be restricted (See, below, Part II C 3).

The Fulbright bill provides that a national emergency declared by the President to require measures under the passport act could not continue for a period of more than one year unless specifically extended by Act of Congress. It should also be noted that the Fulbright bill would make another change regarding travel control during national emergencies. Now, if a national emergency already exists, the President may issue a proclamation requiring passports for foreign travel. Under the Fulbright bill, whether or not a national emergency previously existed, the President could declare a national emergency specifically for the purpose of travel control.

The Fulbright bill defines "travel abroad" as "exit from the United States, entrance into the United States, and travel outside of the United

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<sup>2/</sup> The Fulbright bill does not expressly repeal or change section 215 of the McCarran-Walter Act. Presumably, therefore, when the provisions of that section are in effect, it would be a crime to leave or enter the country without a passport.

States." Western Hemisphere travel therefore could also be regulated by the Secretary of State.

## B. AUTHORITY TO ISSUE OR WITHHOLD PASSPORTS

### 1. Present Law

The Secretary of State, under the basic passport statute (22 U.S.C. Sec. 211A), has exclusive authority to issue passports. Under the regulations issued by the President in implementation of this statute, the Secretary of State is given sole discretion to decide who may receive a passport and in which countries it may be used.

The passport statute provides in part:

The Secretary of State may grant and issue passports...under such rules as the President shall designate and prescribe for and on behalf of the United States and no other person shall grant, issue, or verify such passports.

In 1938, President Roosevelt issued an Executive Order (No. 7856, March 31, 1938), still in effect, which provides that the Secretary of State is "authorized in his discretion to refuse to issue a passport, to restrict a passport for use only in certain countries, to restrict it against use in certain countries, to withdraw or cancel a passport already issued, and to withdraw a passport for the purpose of restricting its validity for use in certain countries" (Par. 124; 22 C. F. R. Sec. 51.76). The Executive Order further authorizes the Secretary of State to issue additional regulations dealing with passports (Par. 126; 22 C. F. R. Sec. 51.76).

Under the authority of this Order, the Secretary of State has issued the regulations that specify which persons will not be issued passports. These regulations explicitly provide, however, that they are not

intended to interfere with the discretionary power of the Secretary to decide who may obtain a passport (22 C.F.R. Sec. 53.8). These regulations therefore are not limitations on the Secretary's power but rather standards which the Secretary has set for himself and which he may, in his discretion, change or revoke. Moreover, as will be pointed out in detail below, the present regulations are so broadly worded that the Secretary has complete discretion to decide who may obtain a passport.

## 2. Wright Commission and Walter Bills

Under the Wright Commission and Walter bills, the Secretary of State would retain sole authority to issue passports and would continue to have absolute power to refuse or to restrict passports. Although these bills provide that certain persons may not be issued passports, they explicitly provide that these provisions are not intended to limit the authority of the Secretary to deny passports "on any ground other than the ground" stated in the bills.

The Walter bill, in addition, contains a provision giving the Secretary of State power to issue regulations relating to passports. In several recent passport litigations, it was argued on behalf of the passport applicants that the basic passport statute does not empower the Secretary to issue substantive regulations. This contention has not been upheld by any court, however.

## 3. Fulbright Bill

The Fulbright bill contains no provision regarding the authority of the Secretary of State to issue passports but it does define a "passport" as a "document issued by the Department of State." The bill is quite explicit

in limiting the discretion of the Secretary to refuse passports. It provides that "No restraints shall be placed on the travel abroad of any citizen except those restraints provided for in this Act." The bill, in addition, specifically states that "Every citizen shall be entitled to receive a passport except as otherwise specified in this Act."

This bill does not contain any provisions giving the Secretary of State power to issue passport regulations.

#### C. POWER TO DENY PASSPORTS TO PARTICULAR INDIVIDUALS

##### 1. Present Law

Under the regulations issued by the Secretary of State (22 C.F.R. Secs. 51.135 and 51.136), there are two general classes of persons who may be refused passports: persons supporting the Communist movement and other persons whose travel abroad is considered by the Secretary of State not to be in the national interest.

The regulations provide that persons who support the Communist movement may not receive passports because they might use the passports in order to "further the purposes of that movement." The regulations define supporters of the Communist movement as persons who are members of the Communist Party or whose membership recently terminated under such circumstances as to warrant the conclusion that they continue to act under its discipline, persons who engage in activities which support the Communist movement which warrant the conclusion that they have engaged in these activities "as a result of direction, domination, or control exercised over them by the Communist movement," and, finally, persons regarding whom there is reason to believe that they are going abroad "to engage in activities

which will advance the Communist movement" (22 C.F.R. Sec. 51.135).

The regulations also provide that "consistent and prolonged adherence" to the "Communist Party line" on a "variety of issues" and through "shifts and changes" of the "line" constitutes prima facie evidence to support a finding that a person is engaging in activities in support of the Communist movement as a result of its direction (22 C.F.R. Sec. 15.141 (b)). The Passport Division of the Department of State and the Board of Passport Appeals are authorized at any stage of the proceedings in a passport appeal to require an applicant to take an oath as to present or past membership in the Communist Party (22 C.F.R. Sec. 51.142). The Department of State has automatically refused passports to individuals who refused to take the non-Communist oath.<sup>3/</sup>

The Secretary of State may also refuse a passport if it appears to him that an applicant's activities abroad would "violate the laws of the United States," would be "prejudicial to the orderly conduct of foreign relations," or would "otherwise be prejudicial to the interests of the United States" (22 C.F.R. Sec. 51.136).

Recently, the State Department gave the following breakdown as to the reasons why passports had been denied to citizens during the calendar year 1956 (Hearings before the Committee on Foreign Relations, United States

<sup>3/</sup> The Supreme Court has agreed to decide three cases which raise the issue whether the Secretary of State's regulations prohibiting the issuance of passports to Communist supporters and authorizing the State Department to require a non-Communist oath are constitutional. Kent v. Dulles and Briehl v. Dulles, 26 U.S. L.W. 3166, and Dayton v. Dulles, 26 U.S.L.W. 3197.

Senate, 85th Cong., 1st Sess. (1957) on "Department of State Passport Policies," p. 39):

Final refusals under Communist regulations	1
Tentative refusal under Communist regulations	20
Persons who are mentally ill	10
Persons likely to become public charges (indigents, persons repatriated at government expense)	9
Habitual criminals (long criminal records and recent offenses)	5
Participants in political affairs abroad whose activities were deemed harmful to good relations and persons whose previous conduct abroad has been such as to bring discredit on the United States and cause difficulty for other Americans (gave bad checks, left unpaid debts, had difficulties with police, etc.)	10
Fraudulent applications	5
Fugitives from justice	10
Persons under Court restraining orders	15

The provisions of the Internal Security Act (50 U.S.C. Sec. 785) which make it unlawful for government officials to issue passports to individuals who are members of organizations which have registered under the Act or which have been ordered by the Subversive Activities Control Board to register have not yet come into effect. No voluntary registrations have taken place under the Act and no final registration orders have been handed down by the Board.

## 2. Wright Commission and Walter Bills

The Wright Commission and Walter bills would make two important changes regarding the refusals of passports to particular individuals:

(1) the standards for refusal would be made statutory; (2) persons who support subversive and totalitarian groups other than the Communist party would also be denied passports. The criteria for determining which individuals support such groups would remain essentially the same as they are under present regulations except that the Secretary of State would be empowered to consider "any other conduct which tends to support the belief that the applicant is going abroad" for any of the prohibited purposes.

Under the Wright Commission and Walter bills, passports would not be issued to persons whenever there is reasonable ground to believe that they are going abroad to engage in activities which would further the objectives of certain types of organization. These include organizations which have been found by Congress, or by a United States official or agency authorized by Congress for that purpose, to seek to alter the Government of the United States by force or violence, to have been organized or utilized to advance the aims of the Communist movement, to have been organized or utilized to establish a dictatorship in the United States or any form of international dictatorship, to have been organized or utilized by a foreign government to engage in various forms of sabotage and espionage and, finally, organizations affiliated with or acting in concert with or dominated or controlled by any of the above.

It should be noted that this list of organizations is identical, with one exception, with the list of organizations that the Wright Commission proposed to include in a new statutory Attorney General's list. The exception is that the Commission would also include on its list organizations which have "adopted a policy of advocating or approving the commission of



acts of force and violence to deny others their rights under the Constitution of the United States" (Report, p. 96). The Wright Commission and Walter bills, by omitting this class of organizations, might permit the issuance of passports to individuals who belong to the White Citizens Councils and the Ku Klux Klan.

The Walter bill would include, in addition to the above, a provision allowing the Secretary to refuse passports to persons when it appears to him that the applicant's activities abroad would be prejudicial to the interests of the United States. The wording in this section is identical with that contained in the present regulations. Although the Wright Commission bill does not contain this provision, the absolute discretion that it gives the Secretary over the issuance of passports would permit him to refuse passports on these grounds.

The Wright Commission and Walter bills would amend the present law in one other respect. The Secretary of State could issue passports to individuals in one of the subversive categories for reasons "deemed by him to be strictly in the public interest." The Commission (Report, p. 478) gave as an example of such public interest the desirability of having a Daily Worker correspondent at the Geneva "Summit" conference to forestall Communist propaganda that the American press would present only the capitalist side of the meetings. Under the present law, such an exception is unnecessary since the prohibition of the issuance of passports to subversives is contained in regulations issued by the Secretary which he can modify in his discretion.

The Wright Commission and Walter bills would also amend the Internal Security Act to allow the issuance of passports to disqualified individuals if the consent of the Attorney General is obtained and the Secretary of State personally finds that it is in the "public interest."

### 3. Fulbright Bill

Under the Fulbright bill, only three types of persons could be denied passports: Those regarding whom there is good reason to believe that their travel abroad would "violate the laws of the United States"; persons who are members (or whose membership has recently terminated) of the Communist Party or an organization ordered by the Subversive Activities Control Board to register;<sup>4/</sup> and persons who owe money to the government for previous transportation back to the United States.

## D. GEOGRAPHICAL RESTRICTIONS ON PASSPORTS

### 1. Present Law

The Secretary of State is empowered to determine in which countries a passport may be used (22 C.F.R. Sec. 51.74). Unlike the refusals of passports to individuals, these restrictions may be imposed at any time, even when no national emergency exists. At present, passports are not valid for travel in Albania, Bulgaria and those portions of China, Korea and Vietnam under Communist control. (Late in 1956, passports were restricted by the Department of State against use in Egypt, Israel, Jordan and Syria. This ban has since been lifted.)

<sup>4/</sup> The omission of any reference to organizations that have voluntarily registered under the Internal Security Act is probably an oversight.

There are several consequences that follow a violation of these restrictions. A person who uses or attempts to use a passport in violation of the restrictions contained in it commits a crime (18 U.S.C. Sec. 1544). The regulations provide, in addition, that the protection of the United States may be withdrawn from a person residing abroad if he uses a passport in violation of its restrictions (22 C.F.R. Sec. 51.75). Recently, the State Department has revoked the passports of several individuals who have traveled in restricted countries and refused to renew the passports of several others.

It is important to note that only the use of a passport in violation of geographical restrictions is a crime. A person who travels in a prohibited country but who does not use his passport to obtain entry to that country does not violate the present statute. The group of young Americans who recently visited Communist China were presumably not prosecuted by the United States government because the Chinese government admitted them without requiring them to submit their passports (Bureau of National Affairs, Government Loyalty and Security, Newsletter, August 30, 1957, p. 2).

## 2. Wright Commission and Walter Bills

Under the Wright Commission and Walter bills, the Secretary of State would retain his authority to restrict passports geographically. In addition, the bills would amend the present statute to make it a crime for a person to travel in a country against which a passport has been restricted, regardless of whether or not the passport is used to facilitate such travel.

## 3. Fulbright Bill

The Fulbright bill would substantially limit the power of the Secretary of State to impose geographical restrictions on travel. Travel

could be restrained only in areas where armed hostilities are in progress, in countries with which the United States is at war and in countries to which the President finds that "travel should be restricted in the national interest."

Before these restrictions may become effective, the President must make a declaration and give the reasons for the imposition of the restraints to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives. In no event may geographical restrictions be effective for a period of more than one year, unless extended by Congress.<sup>5/</sup>

The Fulbright bill specifically provides that the Department may make exceptions to general geographical restrictions for individuals or classes or persons. The Wright Commission and Walter bills do not contain this provision but, in the past, the Secretary of State has often excepted classes of persons from geographical restrictions and his power to do so would undoubtedly continue (See 3 Hackworth, Digest of International Law, pp. 531-534).

#### E. PROCEDURE FOR REVIEW

##### 1. Present Law

In August 1952, the Secretary of State issued a series of regulations which provided for a hearing procedure for cases in which a person was refused

<sup>5/</sup> Under the present wording of the Fulbright bill, even travel restrictions with respect to countries with which the United States is at war or where armed hostilities are in progress expire at the end of one year, unless renewed by an act of Congress. It is probable that it was the intention of the bill to place the one year limitation only on cases in which the President finds that travel should be restricted in the national interest.

a passport. These regulations were issued shortly after a Federal Court held that a passport applicant was constitutionally entitled to procedural due process and that the Secretary's attempts to revoke a passport without a hearing was unlawful (Bauer v. Acheson, 106 F. Supp. 445 (1951)). This holding has been followed by the Federal courts on a number of occasions (for example, Boudin v. Dulles, 235 F. 2d 532 (1956) and Dayton v. Dulles, 235 F. 2d 43 (1956)).

Under these regulations, a person whose passport application has been tentatively refused or whose passport has been revoked is notified of the action and is entitled to ask for an informal hearing before the Passport Division of the State Department. From an adverse decision of the Division, the applicant may appeal to a Board of Passport Appeals. This Board, whose members are appointed by the Secretary of State, does not in itself decide an appeal. It makes a recommendation to the Secretary of State and the Secretary makes the final disposition of the case (22 C.F.R. Sec. 51.137 et seq. and Sec. 51.151 et seq.).

The regulations specifically provide that both the Passport Division and the Board of Passport Appeals may base their decisions on confidential information (22 C.F.R. Secs. 51.137 and 51.163). The Supreme Court has recently agreed to decide whether the use of confidential information in passport cases is a violation of procedural due process (Dayton v. Dulles, Jan. 6, 1958, 26 U.S.L.W. 3197). Earlier, the Circuit Court of Appeals upheld the use of confidential information in this kind of case, saying, "The cases and common sense hold that the courts cannot compel the Secretary to disclose information garnered by him in confidence..." (Dayton v. Dulles,

supra.) The Court of Appeals has held, however, that in all cases in which passports are denied, the Department of State must state whether its decision is based on evidence openly produced or on confidential information and, if the latter, he must state the circumstances which make it impossible to produce the evidence in public (Boudin v. Dulles, supra, Dayton v. Dulles, supra.).

2. Wright Commission and Walter Bills

In its Report, the Wright Commission made a number of proposals regarding the procedure used in passport cases. The Commission did not include these recommendations in its proposed bill, however, and instead suggested that they be implemented by means of changes in the regulations. The Walter bill, however, proposes an entirely new statutory appeals procedure.

The Wright Commission proposals would change certain details in the procedure for appeals from refusals and revocations of passports. These changes would, in general, operate for the benefit of passport applicants. Nevertheless, the most important features of the current review procedure would be retained: the non-statutory basis of appeals, the lack of appeals from geographical restrictions, the advisory capacity of the Board of Passport Appeals and the use of confidential information.

The most important of the Wright Commission proposals are:

(1) Job qualifications would be specified for Passport Office employees who are charged with responsibility for security decisions.

(2) The Passport Division would be required to comply with regulations which provide that, in both tentative and final passport

refusals, the applicant must be notified of the reasons upon which the adverse decision is based.

(3) The applicant would be entitled to see the full transcript of the proceedings before the Passport Division and the Board of Passport Appeals but subject to security deletions.

(4) The Secretary of State would be required to communicate to the applicant the reasons upon which his final decision is based.

(5) The Passport Division would be required to make monthly reports, listing the cases pending for more than 60 days and giving the reasons for the delay in their disposition.

(6) A person residing abroad whose passport has been revoked would be entitled to a hearing before a United States official abroad without having to return to the United States.

(7) Review of revocation cases would be given priority.

The Walter bill proposes amendments to the Administrative Procedure Act which would substantially revise the passport review procedure. Under this bill, the Board of Passport Appeals would be abolished. Each applicant who had been refused a passport would be entitled to a formal hearing before a "special review officer" in the Passport Division. The review officer would make a recommendation to the Secretary of State who would, as now, make the final decision.

The Walter bill, like the Wright Commission in its report, would not allow appeals from geographical restrictions and would authorize the use of confidential information. The Walter bill, in addition, contains the unusual provision that State Department files and other pertinent Government

files may be submitted to the special review officer, who shall consider them as evidence in the case without testimony as to their admissibility. The bill specifically provides that these files may not be examined by the applicant.

Various provisions aimed at safeguarding the rights of the applicant are included in the Walter bill, of which a few may be mentioned. An applicant would be entitled to a notice of the hearing before the review officer, he could be represented by counsel and he would be entitled to testify on his own behalf and to have witnesses. In addition, the applicant would be entitled to see a transcript of the entire hearing before the review officer (subject, presumably, to security deletions). The Walter bill also provides that the review officer, in making his recommendations, would have to take into consideration the fact that the applicant is unable to challenge the confidential information.

### 3. Fulbright Bill

The Fulbright bill would also provide a statutory basis for appeals from passport refusals. The bill only draws the broad outlines of this procedure, however, and provides that the details are to be supplied by "reasonable regulations to be issued by the Department."

Under the Fulbright bill, the State Department must either grant or refuse a passport application within thirty days. If the application is denied, the citizen must be notified in writing of the decision and be informed of the reasons for the State Department's action. The applicant could then appeal to a board of passport appeals, where he is entitled to a "full and fair hearing" and to be represented by counsel. Within thirty



days of such an appeal, the State Department would have to hand down a final decision. (Presumably, the board would advise the Department.) The applicant could then appeal an adverse decision to a United States District Court.

The bill makes no provision regarding the use of confidential information. In addition the Fulbright bill is ambiguous as to whether geographical restrictions may be appealed. It provides that an appeal may be had from an action of the State Department "adversely affecting the right of a person to receive or use a passport." The phrase, "the right to...use a passport" may be interpreted so as to include the right of a citizen to appeal a geographical restriction.

#### CONCLUSION

The American Jewish Congress has consistently taken the position that a United States citizen has the right to travel abroad and that, except in a few narrowly defined situations, that government should not have power to prevent an individual from traveling in any country he chooses. This analysis, however, has been prepared without stating the position of the American Jewish Congress on the various specific proposals described above. We hope that it will contribute to dispassionate and reasonable discussion of the question of travel control and to an ultimate solution consistent with both national security and constitutional freedom.

Benjamin W. Mintz

February 5, 1958

